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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCO RAMON RODRIGUEZ,

Defendant and Appellant.

A124332

(Napa County
Super. Ct. No. CR143555)

After a court trial, appellant Franco Ramon Rodriguez was convicted of second degree commercial burglary and petty theft with prior convictions. (Pen. Code, §§ 459, 666.) Sentenced to three years in state prison, Rodriguez contends that his waiver of a jury trial was invalid, requiring reversal of the judgment. We affirm.

I. FACTS

In December 2008, Rodriguez was charged by information with second degree commercial burglary and petty theft with prior convictions. (Pen. Code, §§ 459, 666.) The information alleged the specifics of his prior convictions.

On February 17, 2009, the morning scheduled for jury trial, the following colloquy took place: “THE COURT: And good morning, Mr. Rodriguez [*sic*]. I did receive a phone call yesterday indicating that you may be waiving your right to have a jury. Is that in fact true? [¶] THE WITNESS: Yes. [¶] THE COURT: And [PROSECUTOR], the People are willing to waive their right to a jury well? [¶] [PROSECUTOR]: Yes, your Honor. [¶] THE COURT: What I’m going to do is go across the street, excuse the

jurors, and then we'll be ready to start up in about 15 minutes. [¶] [DEFENSE COUNSEL]: Thank you. [¶] THE COURT: Thank you.”

The trial court then conducted a court trial. After hearing testimony, reviewing exhibits, and listening to opening and closing statements, the trial court found Rodriguez guilty of both charges. It also found that the prior conviction allegations were true. Rodriguez was sentenced to a total term of three years in state prison, including one year for his prior convictions.

II. DISCUSSION

On appeal, Rodriguez argues that his waiver of his right to a jury trial was invalid. Under the California Constitution, a jury trial may be waived in a criminal case if the consent of both the defendant and defendant's counsel is expressed in open court. (Cal. Const., art. I, § 16.) A waiver must be knowing, intelligent, and voluntary to be effective. (*People v. Smith* (2003) 110 Cal.App.4th 492, 500.) There is no standard procedure to secure a defendant's waiver. Extensive questioning is not required. (*Ibid.*) The defendant's waiver must be oral—it may not be implied merely from conduct or circumstances alone. (*People v. Ernst* (1994) 8 Cal.4th 441, 445.) However, when the defendant gives an express waiver, the acquiescence of defense counsel may be implied. (*People v. Evanson* (1968) 265 Cal.App.2d 698, 701.) On appeal, the proponent of a waiver bears the burden of proving its existence and doubtful cases will be resolved against a finding of a waiver. (*People v. Smith, supra*, 110 Cal.App.4th at pp. 500-501.)

Here, Rodriguez contends that he did not expressly waive his right to a jury trial, but rather only confirmed the fact that he may waive it. We find this argument to be strained. Carried to its logical extreme, this argument would support the conclusion that the prosecution did not waive a jury trial either, but merely indicated that it was willing to do so. We evaluate the colloquy between the defendant and the court to determine if a constitutional waiver of a jury trial was given. The trial court asked Rodriguez if he was willing to waive his right to a jury trial. Rodriguez responded unambiguously, “Yes.”

The court indicated that it would begin trial after excusing the potential jurors. No objection to this proposal was made by Rodriguez or his counsel, who appears to have agreed to the plan. This constitutes an express waiver by Rodriguez. Defense counsel's waiver may be implied from her acquiescence in the preparation for a court trial. Accordingly, we find that the waivers were valid.

III. DISPOSITION

The judgment is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.